IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 464 OF 2005

WITH

CIVIL APPLICATION NO. 1039 OF 2005

Mrs. Sharda Sadanand Warghade ..Appellant

versus

Sadanand Rajaram Warghade ..Respondent

Mr. A. R. Pitale for the Appellant.

Mr. K. N. Joshi for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 19TH JULY,2005

ORAL ORDER :

1. Heard advocate for the appellant and the respondent.

2. This is an appeal by the mother of the minors and the wife of the respondent - husband for custody of the children. The trial court while rejecting the prayer of the mother taken into consideration welfare of the children. Mother - appellant lives at Khutghar, Shahapur, Dist : Thane and the husband is living at Padgha, Tal :

Bhiwandi, Distance between the two is about 25 - 30 kms. Secondly, wife has no source of earning. She has filed maintenance petition against the husband and has been awarded Rs.700/- per month as maintenance under Section 125.

3. Since the welfare of the children is a prime consideration. In such circumstances the trial court was fully justified in rejecting the claim of the appellant. There are no circumstances or grounds upon which the wife could be said to have been in a better position than the husband to look after the children and to bring them up and to spent for their education, health and well being.

4. However, counsel for the appellant, alternatively submitted that even access has not been granted to the wife. As against this, counsel for the respondent contended that the wife is living with her paramour but that is not the matter borne out by the record so that factor was not considered by the lower court. If there is anything adverse against the wife so far as the status as mother is concerned, then she can be permitted to have access to the children.

5. Advocate for the respondent contended that there was no such prayer before the trial court but

that will not make much difference. The order can be modified and therefore, I pass the following order:

ORDER

. The appeal is allowed i.e. without disturbing the final order of the lower court. The prayer of the appellant for access to the children is allowed. The appellant will have access to the children for that she will have to go to the house of the husband twice a week on Wednesday and Friday between 3 p.m. to 6 p.m. Mother can have custody of one child at a time once in a month for 24 hours after pre-intimation in writing to the husband regarding the time when she would take him away, which child and when she would return the child to their custody.

. Appeal stands disposed of along with Civil Application No. 1039 of 2005.

. Certified copy expedited.

19.7.2005 (D.G. DESHPANDE, J.)